IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 5TH OCTOBER 2007 / 13TH ASWINA 1929

Crl.MC.No. 3072 of 2007()

CC.89/2006 of JUDL. MAGISTRATE OF FIRST CLASS COURT-II, TRIVANDRUM

.....

PETITIONER: RESUME

---

1. IDUL KRISHNAN
   GED 23,S/O. UNNIKRISHNAN
   DWARAKA, T.C.10/285 AMBALAMUKKU,NEDUMBRAM,
   KUDAPPANAKUNNU VILLAGE,TRIVANDRUM.

2. SINDUL KRISHNAN,AGED 26,
   S/O UNNIKRISHNAN,DWARAKA,
   DWARAKA, T.C.10/285 AMBALAMUKKU,NEDUMBRAM,
   KUDAPPANAKUNNU VILLAGE,TRIVANDRUM.

BY ADV. SRI.A.AHZAR

RESPONDENTS:

---

1. STATE OF KERALA
   REP. BY PUBLIC PROSECUTOR
   HIGH COURT OF KERALA
   ERNAKULAM.

2. LILLI CHANDRAN,
   THAIPOOYAM VEETIL,ARASUPARAMBU KARAVALAVIL
   NEDUMANGANANDU VILLAGE,NEDUMANGANANDU TALUK,
   TRIVANDRUM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 05/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3072 of 2007

Dated this the 5th day of October, 2007

O R D E R

Petitioners are accused 2 and 3 in a prosecution, where allegations are made under Section 420 r/w 34 I.P.C. Cognizance has been taken on the basis of a final report submitted by the police after due investigation. The petitioners have already appeared before the learned Magistrate and have been enlarged on bail, it is submitted. The petitioners have now come to this Court with a prayer that powers under Section 482 Cr.P.C may be invoked to quash the proceedings against the petitioners.

2. What are the reasons ? The short ground urged is that the allegations are groundless. There are no worthwhile allegations which can compel the petitioners to the ordeal of facing trial. In these circumstances, it is prayed that powers under Section 482 Cr.P.C may be invoked and premature termination of proceedings directed.

3. I must alertly remind myself of the nature, quality and contours of the jurisdiction of this Court under Section 482 Cr.P.C. It is the extraordinary inherent jurisdiction which is sought to be invoked. Satisfactory, compelling and exceptional reasons must be shown to exist to persuade the Court to invoke such powers. The Code of

Criminal Procedure contemplates a procedure for premature termination of proceedings when such prosecution is unjustified. Section 239 Cr.P.C clearly contemplates the possibility of indictments being raised against indictees even when the allegations are groundless. When the allegations are groundless, normally and ordinarily an indictee must take resort to the provisions under the Code. Not that this Court does not have jurisdiction in an appropriate case to invoke the inherent jurisdiction under Section 482 Cr.P.C and quash the proceedings. Sobriety and sagacity must be shown in choosing the right case for invocation of the jurisdiction under Section 482 Cr.P.C. As stated earlier, the Code does contemplate the possibility even if it be remote of groundless allegations being raised against an indictee and it is for his rescue that Section 239 has been engrafted.

4. To sum up, I do not find any reasons in this case which can justify the prayer to invoke the powers under Section 482 Cr.P.C. The petitioners must claim discharge before the learned Magistrate under Section 239 Cr.P.C. Needless to say, the learned Magistrate must anxiously consider such plea and take appropriate decision in the matter. The learned counsel for the petitioners submits that unnecessary insistence on personal presence of the petitioners would cause great hardship and loss to the petitioners. I can find no reason

why the learned Magistrate should insist on the personal presence of the petitioners before the learned Magistrate until a decision is taken on the question u/s 239/240 Cr.P.C. Till then, they can apply for exemption. If and only if the learned Magistrate takes the decision that charges are liable to be framed, need the petitioners be directed to appear in person. Notwithstanding the absconding of the 5th accused, plea for discharge of the petitioners must be considered by the learned Magistrate expeditiously - at any rate, within a period of 45 days from the date on which a copy of this order is placed before the learned Magistrate.

Hand over a copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

rtr/-